



2015-049

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable John F. Porter, III
Attorney, Jackson County Board
of Education
123 East Laurel Street
Scottsboro, Alabama 35768

Education, Boards of – Superintendents –
Vacancies – Schools – Term of Office

In accordance with section 16-9-11 of the Code of Alabama, if there is a vacancy created in the office of superintendent, the Jackson County Board of Education must appoint a successor within 180 days of the vacancy occurring. Failure to make such an appointment will result in the State Department of Education withholding warrants. Section 16-9-8(b) of the Code authorizes the appointed superintendent to serve the remainder of the term of the previously elected superintendent.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your request on behalf of the Jackson County Board of Education.

QUESTION

What is the proper procedure, in accordance with section 16-9-8 and section 16-9-11 of the Code of Alabama, to be utilized by the Jackson County Board of Education to fill the vacancy of its elected superintendent should the superintendent leave office before the end of his current term?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Jackson County School Superintendent is elected by popular vote of electors within the county. The present superintendent was elected to his second term of office that commenced on January 1, 2012. Concerns have arisen because it is anticipated that the current superintendent will retire before the end of his term creating a vacancy in the position of County Superintendent. You seek guidance regarding the interpretation that should be given to sections 16-9-8 and 16-9-11 of the Code when read in conjunction.

Your inquiry states that section 16-9-11 authorizes the filling of vacancies in the position of County Superintendent, but the provision does not specifically state that it is applicable to school systems where the superintendent is elected by popular vote. You further state that you interpret section 16-9-8 of the Code to authorize the election of a superintendent in the instance an elected superintendent resigns or dies in office. With this interpretation, however, you note that the provision does not state whether the election is to be a special election or one that coincides with the superintendent's current term.

Section 16-9-8 of the Code sets forth the term of office for an elected superintendent. ALA. CODE § 16-9-8 (2012). This provision was modified in 1997 to change the commencement of the term from July 1 to January 1. Opinion to Honorable Gerald O. Dial, Member, Alabama State Senate, dated August 14, 2000, A.G. No. 2000-209 at 3-4. The current provision of section 16-9-8 contains the 1997 amendments that were the result of the passage of Act 97-630. 1997 Ala. Acts No. 97-630, 1144. Section 16-9-8 states as follows:

(a) In counties in which the county superintendent of education is elected by popular vote, the successful candidate shall take office on January 1 following the date of election. In the event the successful candidate dies or resigns prior to January 1 following the date of election, a successor shall be elected at a special election held for that purpose set upon proclamation of the Governor. County party committees may call primary elections to be held in accordance with Chapter 7 of Title 17, to determine party candidates at the special election. In the event one candidate at the election does not receive a majority of all votes cast at the election, there shall be held a run-off election three weeks after the date of the first election between the two candidates who received

the highest number of votes. The incumbent shall continue to hold office until a successor is elected and qualified.

(b) An elected county superintendent of education holding office on May 27, 1997, shall continue to serve the remainder of his or her term. If an elected county superintendent of education resigns or dies in office, his or her successor shall serve only until January 1 following the election of a successor. This section shall apply to the term of any county superintendent of education elected after May 27, 1997.

ALA. CODE § 16-9-8 (2012).

You question whether section 16-9-8 may authorize the calling of a special election of a successor superintendent in the event a superintendent resigns or dies while in office. Section 16-9-8(a) authorizes a special election in the instance that a candidate elected during a regularly scheduled election dies or resigns prior to taking office. *Id.*

Section 16-9-8(b) of the Code preserves the term of office of anyone serving as an elected superintendent as of May 27, 1997. Moreover, subsection (b) makes clear that anyone appointed to fill a vacancy in the office of any superintendent elected after May 27, 1997, will serve until the January 1 following the election of a successor. This provision does not specifically authorize the calling of an election, and there is nothing indicating that the Legislature intended such a result. *See, generally*, opinion to Honorable Alan L. King, Jefferson County Judge of Probate, dated January 29, 2015, A.G. No. 2015-029 (noting the need for specific authority to call an election). Accordingly, this provision refers to the regularly scheduled election to fill a completed term in the office of an elected superintendent.

Further, the provision ensures that candidates for election after May 27, 1997, or anyone filling a vacancy in the position after May 27, 1997, realized the term of office commenced and ended on January 1 following the election for a successor or new superintendent of education for that county. *See, generally*, opinions to Honorable John P. Oliver, II, Attorney for the Tallapoosa County Board of Education, dated November 14, 2000, A.G. No. 2001-033; and Honorable Gerald O. Dial, Member, Alabama State Senate, dated August 14, 2000, A.G. No. 2000-209.

Section 16-9-11 provides for the manner in which vacancies in the office of superintendent should be handled. ALA. CODE § 16-9-11 (2012). Based on the plain language of the provision, subsections (a) and (b) are applicable to both appointed and elected officials. Subsections (c) and (d) are provisions that are applicable only to appointed superintendents. Section 16-9-11 states as follows:

(a) A vacancy in the position of county superintendent shall be filled by the county board of education within 180 days after such a vacancy occurs. Within 90 days after the occurrence of a vacancy, the county board of education shall announce, in a regularly or specially called meeting, a proposed process and time-line for posting and selecting a superintendent.

(b) In the event such vacancy is not filled by the county board of education within 180 days, the state superintendent shall withhold state warrants until the vacancy is filled unless the board, to the satisfaction of the state superintendent, exhibits good faith and reasonable effort in progress toward selecting a superintendent.

(c) Notice of a vacancy in the position of an appointed county superintendent of education shall be posted by the county board of education. The notice shall be posted in a conspicuous place at each school campus and worksite at least 30 calendar days before the position is to be filled. The notice shall remain posted until the position is filled and shall include, but not necessarily be limited to, all of the following:

- (1) Job description and title.
- (2) Required qualifications.
- (3) Salary range.
- (4) Information on where to submit an application.
- (5) Information on any deadlines for applying.

(6) Any other relevant information.

(d) The board may adopt or continue policies which are not inconsistent with this section. Whenever a vacancy occurs in the position of an appointed county superintendent of education, the county board of education may appoint an interim superintendent to serve for up to 180 days. The interim superintendent shall satisfy the minimum qualifications required for service as a county superintendent of education. The county board of education, pertaining only to the interim superintendent's position, shall not be required to post the position. The adoption of additional policies shall comply with the requirements and procedures of Section 16-1-30.

(e) Substantive, willful violation of the notice requirements of this section shall void any related employment action taken by the board.

ALA. CODE § 16-9-11 (2012).

Pursuant to section 16-9-11 of the Code, the Jackson County Board of Education is charged with announcing the vacancy, providing a proposed process and timeline for posting and selecting a superintendent, and appointing a successor to the position of superintendent within 180 days after such vacancy occurs. *Id.* Both sections 16-9-8 and 16-9-11 have been in the Code since 1927. Although there have been amendments to these statutes, none of these changes have meaningfully altered the original intent of either of these provisions to respectively give guidance regarding the term of office of elected superintendents or vacancies within the office of superintendent.

Based on the foregoing, if an elected superintendent resigns while in office, section 16-9-11 of the Code requires the county board of education to fill the vacancy within 180 days of the occurrence. Pursuant to section 16-9-8 of the Code, any successor appointed is authorized to serve until January 1 following the regularly scheduled election for a superintendent. Thus, section 16-9-8 of the Code authorizes anyone appointed to serve the remainder of the term of the incumbent superintendent.

CONCLUSION

In accordance with section 16-9-11 of the Code, if there is a vacancy created in the office of superintendent, the Jackson County Board of Education must appoint a successor within 180 days of the vacancy occurring. Failure to make such an appointment will result in the State Department of Education withholding warrants. Section 16-9-8(b) of the Code authorizes the appointed superintendent to serve the remainder of the term of the previously elected superintendent.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division

LS/MMG
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